

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARIO J. ROYAL,

Defendant-Appellant.

UNPUBLISHED

September 18, 2003

No. 237797

Wayne Circuit Court

LC No. 00-014064

Before: Owens, P.J., and Griffin and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for felon in possession of firearm, MCL 750.224f, intentionally discharging a firearm at a dwelling or occupied structure, MCL 750.234b, willful and malicious destruction of personal property, MCL 750.377a(1)(b)(i), and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to two to four years' imprisonment for the felon in possession of a firearm conviction, two to five years' imprisonment for the discharge of a firearm at a building conviction, two to five years' imprisonment for the malicious destruction of personal property conviction, and a mandatory two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant's sole issue on appeal is that improper scoring of Offense Variable 9 (OV 9) resulted in a departure from the correct statutory sentencing guidelines range. We disagree. Because defendant failed to specify the scoring error asserted and only stated general disagreement with the resultant scoring level, the issue is not properly preserved for review. Consequently, our review is limited to a plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

To necessitate resentencing, defendant must demonstrate the disputed offense variable was incorrectly scored and the error resulted in a departure from the sentencing guidelines range absent substantial and compelling reason. *People v Hegwood*, 465 Mich 432, 438; 636 NW2d 127 (2001). In addition, defendant must successfully challenge the discretion allowed a sentencing court in determining the number of points to be scored if there is evidence on the record that adequately supports a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

Defendant's counsel contends that OV 9 was improperly scored. Specifically, defendant asserts there was only one victim involved which should result in a score of zero, and not ten, on

this variable. MCL 777.39 provides for a scoring of zero for OV 9 if there are fewer than two victims. A score of ten is required if there are two to nine victims. MCL 777.39(1), (2). Testimony at trial clearly indicated the undisputed presence of three individuals in the home shot at by defendant. One of these individuals was in immediate danger, as bullets entering the home narrowly missed him and embedded in the furniture. Upon hearing gunshots, another occupant of the building entered into the area of danger, necessitating her getting on the floor. This victim crawled to another room to assist an elderly occupant to the floor for safety. The victims and a police officer all testified regarding the extensive damage and number of bullet holes to the front and interior of the home from entry and ricochet.

Given the evidence regarding the substantial damage to the home from numerous bullet holes, it is reasonable to believe that all persons within the home, at the time of the shooting, were in danger. The language of MCL 777.39 is clear and unambiguous as to scoring of OV 9 and should be given its plain meaning. *People v Libbett*, 251 Mich App 353, 365-66; 650 NW2d 407 (2002). A court must assign points for every person that was placed in danger of injury or loss. *People v Kimble*, 252 Mich App 269, 274; 651 NW2d 798 (2002). As such, a score of ten on this variable is consistent with both the record and the Legislature's intent.

Based on a determination that the scoring of OV 9 was proper, defendant's remaining arguments regarding departure from the sentencing guidelines and proportionality of sentencing are rendered moot. We hold that OV 9 was scored in accordance with statutory requirements and the court did not depart from the guidelines range in imposing defendant's sentences.

Affirmed.

/s/ Donald S. Owens
/s/ Richard Allen Griffin
/s/ Bill Schuette